



California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Agency Secretary

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Arnold Schwarzenegger
Governor

December 17, 2010

Mr. Hovsep Gezalian and Sarkis Gezalian
Diamond Tire Center
16604 Pioneer Blvd
Artesia, CA 90701

VIA EMAIL & CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO. 7002 0860 0004 5295 4419

COMPLAINT NO. R4-2010-0211 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST MR. HOVSEP GEZALIAN AND MR. SARKIS GEZALIAN REGARDING FAILURE TO COMPLY WITH CLEANUP AND ABATEMENT ORDER FOR THE PROPERTY LOCATED AT 16604 PIONEER BLVD, ARTESIA, CALIFORNIA (DAIMOND TIRE CENTER).

Dear Mr. Gezalians:

Enclosed is Complaint No. R4-2010-0211 for Administrative Civil Liability in the amount of \$310,130 against Mr. Hovsep Gezalian and Mr. Sarkis Gezalian (hereinafter Respondents) for certain alleged violations of Cleanup and Abatement Order No. R4-2006-0025. Also enclosed is the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) Notice of Public Hearing for this matter.

Unless waived, a hearing before the Regional Board or a Regional Board Hearing Panel (Hearing Panel) will be held on this Complaint pursuant to California Water Code §§ 13228.14 and 13323. Should the Respondents choose to waive their right to a hearing, an authorized agent must sign the waiver form attached and return it to the Regional Board by 5:00 pm on January 18, 2011. If we do not receive the waiver and full payment of the penalty by January 18, 2011, this matter will be heard before the Regional Board or Hearing Panel. An agenda containing the date, time, and location of the hearing will be mailed to you prior to the hearing date.

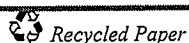
If you have any questions, please contact Dr. Yue Rong at (213) 576-6710 (yrong@waterboards.ca.gov), or Mr. Gregg Kwey at (213) 576-6702 (gkwey@waterboards.ca.gov), or Mr. Ahmad Lamaa at (213) 576-6716 (alamaa@waterboards.ca.gov).

Sincerely,

Samuel Unger, PE
Executive Officer

- Attachments: 1. Administrative Civil Liability Complaint No. R4-2010-0115 and Waiver Form
2. Notice of Public Hearing

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

cc: Mr. David Boyers, State Water Resources Control Board,
Office of Enforcement
Ms. Kathy Jundt, State Water Resource Control Board,
Underground Storage Tank Cleanup Fund
Mr. Tim Smith, Los Angeles County Department of Public Works, Environmental
Programs Division
Ms. Paula Rasmussen Los Angeles Regional Water Quality Control Board,
Mr. Joseph P. Derhake, AEI Consultants



**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the Matter Of:

Mr. Hovsep Gezalian and
Mr. Sarkis Gezalian

Diamond Tire Center

Complaint No. R4-2010-0211

**For
Administrative Civil Liability**

Violations of Order No R4-2006-0025

December 17, 2010

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Mr. Hovsep Gezalian and Mr. Sarkis Gezalian (Respondents) are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) may impose civil liability pursuant to Water Code section 13350.
2. Unless waived, a hearing on this matter will be held before the Los Angeles Water Board, or a panel of Los Angeles Water Board members, within 90 days following issuance of this Complaint. Respondents, or their representative(s), will have an opportunity to address and contest the allegations in this Complaint and the proposed imposition of administrative civil liability.
3. At the hearing, the Los Angeles Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for assessment of judicial civil liability.

BACKGROUND

4. Respondents own property located at 16604 Pioneer Blvd., Artesia, CA that has been used for auto service and retail tire and gasoline sales since 1953, and has operated as Diamond Tire Center since 1983.
5. On March 8, 2006, the Los Angeles Water Board issued Cleanup and Abatement Order No. R4-2006-0025 (Order) to the Respondents pursuant to Water Code section 13304, making the following pertinent findings regarding the property:
 - a. From the early 1950's to 1987, the site maintained two 10,000-gallon and one 3,500-gallon steel underground storage tanks (USTs). In the summer of 1987, the USTs were upgraded with three 10,000-gallon double-walled fiberglass USTs and one 1,000-gallon waste oil UST. All the USTs were excavated and removed from the site in 2001, and thereafter the facility has consisted of a basic automobile maintenance and tire retail establishment.

- b. Analytical soil sampling results in 1987 indicated Total Petroleum Hydrocarbon as gasoline (TPH-g) at 1,000 milligram per kilogram (mg/Kg), benzene at 10 mg/Kg, and MTBE at 7 mg/Kg. The highest concentrations were detected at 15 feet below ground surface.
- c. Free product was first detected in 1988 in groundwater monitoring wells and ranged between 9 to 11 feet.
- d. Site remediation efforts at the site have primarily consisted of free product removal;
 - From 1988 to 1990, approximately 32,000 gallons of free-floating gasoline product were removed using an automatic skimmer pump.
 - From 1994 to 1996, free product was bailed manually.
 - In 2000, free product was recovered using a skimmer pump.
 - From 2001 to 2002 a high vacuum dual-phase extraction remediation system was applied at the site.
- e. As of the end of March 2003, free product in selective wells was either absent or a sheen.
- f. Groundwater sampling results collected on November 6, 2003 detected a maximum TPH-g concentration of 179,000 milligrams per liter (mg/L), a maximum benzene concentration of 33,600 micrograms per liter (ug/L), and maximum MTBE concentration of 998 ug/L. The extent of the dissolved gasoline plume is still not fully defined.
- g. The reimbursement for the site remediation from the Underground Storage Tank Cleanup Fund has reached \$1.5 million as of December 31, 2003, and therefore the allocated cleanup funds for the site have been exhausted.
- h. Periodic groundwater monitoring reports and site conceptual model updates have not been submitted since the fourth quarter of 2003.
- i. In the "Risk Based Closure Report" dated July 22, 2004, the Responsible Party requested a No Further Action and requested that the Diamond Tire Site be granted closure without additional treatment or requirements.
- j. In a letter dated August 9, 2005, Los Angeles Water Board staff denied the No Further Action for the following reasons:

- The extent of the contamination plume is still undefined, and offsite impact is still very significant. Onsite and offsite monitoring wells still exhibit significant levels of contamination.
 - Free product is still present in monitoring well MW-21 at a thickness of 0.11 feet, as of November 3, 2002.
 - Residual soil contamination at the site is still an ongoing source contributing to groundwater contamination.
 - Soil vapor samples needed to confirm field-testing for the Risk Assessment study were not collected.
 - Groundwater data was submitted only up to November 2, 2003, therefore, Los Angeles Water Board staff are not able to determine the extent of other contaminants at the site (TPH-g, Oxygenates, Benzene, Toluene, Ethylbenzene, and Xylenes).
6. The latest soil data collected on August 31, 2002, during the installation of four remediation wells (AEI-RWI through AEI-RW4), detected maximum TPH-g concentrations of 21,500 mg/Kg, maximum benzene concentrations of 240,000 micrograms per kilogram (ug/Kg), and maximum MTBE concentrations of 805 ug/Kg. The latest groundwater sampling results collected on November 6, 2003, detected maximum TPH-g concentrations of 179,000 mg/L, maximum benzene concentrations of 33,600 ug/L, and maximum MTBE concentrations of 998 ug/L. In addition, the extent of the dissolved gasoline plume is still not fully defined.
7. Cleanup and Abatement Order No. R4-2006-0025, issued on March 8, 2006, directed the Respondents to take certain actions to assess, monitor, report and cleanup and abate the effects of gasoline discharged to soil and groundwater. The Los Angeles Water Board specifically warned the Respondents that failure to comply with the terms of the Order would result in the imposition of administrative civil liability.

ALLEGATIONS

PART 1: Requirement A.

DEVELOP A WORKPLAN TO FULLY DEFINE THE EXTENT AND CLEAN UP THE EFFECT OF FREE PRODUCT AND DISSOLVED PETROLEUM HYDROCARBON PLUME(S)

8. Requirement A on Page 3 of Cleanup and Abatement Order No. R4-2006-0025 directs the Respondents to:

“Develop a workplan by **June 15, 2006**, to complete any remaining soil and/or groundwater investigations necessary to fully define the offsite lateral and vertical extent of any free product or dissolved petroleum hydrocarbon plume(s), to include MTBE or other fuel oxygenate contamination, and clean up and abate the contamination until it no longer poses as a threat to water quality of the state.”

9. The Respondents failed to develop and submit the workplan in accordance with Requirement A by June 15, 2006. In a letter dated May 4, 2010, the Los Angeles Water Board notified the Respondents of the violation and warned of the potential for the imposition of administrative civil liability.
10. To date, the Respondents have failed to comply with Requirement A, and therefore have been in violation for **1,647** days (June 15, 2006 – December 17, 2010).
11. The workplan is needed in order to determine impacts to water quality caused by past operations at the site in order to facilitate remediation efforts in accordance with Water Code section 13304. Pursuant to Water Code section 13350, the Los Angeles Water Board may impose liability up to \$5,000 for each day of violation.
12. Water Code section 13327 specifies factors that the Los Angeles Water Board shall consider in establishing the appropriate amount of civil liability under Water Code section 13350. The Water Quality Enforcement Policy (Enforcement Policy) adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to the factors in Water Code section 13327.
13. Attachment A to this Order indicates the proposed civil liability for the violations described in Part 1, above, derived from the use of the penalty methodology in the Enforcement Policy.
14. As described in Attachment A, the proposed liability for the violations described in Part 1, above, is **\$214,500**.

PART 2: Requirement B.

SUBMIT QUARTERLY GROUNDWATER MONITORING AND SAMPLING REPORTS

15. Requirement B on Page 3 of Cleanup and Abatement Order No. R4-2006-0025 requires that the Respondents submit quarterly groundwater monitoring reports, with the first report due **April 15, 2006**, and describes what information the reports must contain.
16. The Respondents have failed to submit any quarterly groundwater monitoring reports in accordance with Requirement B. In a letter dated May 4, 2010, the Los Angeles Water Board notified the Respondents of the violation and warned of the potential for the imposition of administrative civil liability.
17. To date, the Respondents have been in violation of Requirement B for **1,708** days. (April 15, 2006 – December 17, 2010)
18. The groundwater monitoring reports are required in order to determine impacts to water quality caused by past operations at the site in order to facilitate remediation efforts in accordance with Water Code section 13304. Pursuant to Water Code section 13350, the Los Angeles Water Board may impose liability up to \$5,000 for each day of violation.
19. Water Code section 13327 specifies factors that the Los Angeles Water Board shall consider in establishing the appropriate amount of civil liability under Water Code section 13350. The Water Quality Enforcement Policy (Enforcement Policy) adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to the factors in Water Code section 13327.
20. Attachment B to this Order indicates the proposed civil liability for the violations described in Part 2, above, derived from the use of the penalty methodology in the Enforcement Policy.
21. As described in Attachment B, the proposed liability for the violations described in Part 2, above, is **\$221,650**.

PART 3: Requirement C.
SITE CONCEPTUAL MODEL UPDATE (SCMU)

22. Requirement C on Page 4 of Cleanup and Abatement Order No. R4-2006-0025 directs the Respondents to update the Preliminary Site Conceptual Model by **June 15, 2006**, and every quarter thereafter.
23. Respondents failed to update the Preliminary Site Conceptual Model in accordance with Requirement C by June 15, 2006. In a letter dated May 4, 2010, the Los Angeles Water Board notified the Respondents of the violation and warned of the potential for the imposition of administrative civil liability.
24. To date, the Respondents have failed to comply with Requirement C, and therefore have been in violation for **1,647** days (June 15, 2006 – December 17, 2010).
25. The updates to the Preliminary Site Conceptual Model are required in order to determine impacts to water quality caused by past operations at the site in order to facilitate remediation efforts in accordance with Water Code section 13304. Pursuant to Water Code section 13350, the Los Angeles Water Board may impose liability up to \$5,000 for each day of violation.
26. Water Code section 13327 specifies factors that the Los Angeles Water Board shall consider in establishing the appropriate amount of civil liability under Water Code section 13350. The Water Quality Enforcement Policy (Enforcement Policy) adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to the factors in Water Code section 13327.
27. Attachment C to this Order indicates the proposed civil liability for the violations described in Part 3, above, derived from the use of the penalty methodology in the Enforcement Policy.
28. As described in Attachment C, the proposed liability for the violations described in Part 3, above, is **\$136,500**.

MAXIMUM LIABILITY

29. Pursuant to Water Code section 13350, the maximum administrative civil liability which could be imposed by the Los Angeles Water Board for failing to comply with requirements of Cleanup and Abatement Order No. R4-2006-0025 is five thousand dollars (\$5,000) for each day in which the violation occurs.

As shown in the table below, the maximum liability that may be imposed for the violations described in Parts 1 through 3, above, is twenty five million ten thousand dollars (\$25,010,000).

Part	Requirement	Days of Violation	Maximum Potential Liability
Part 1	Develop a workplan to fully define the extent and clean up the effect of free product and dissolved petroleum hydrocarbon plume(s)	1,647	\$8,235,000
Part 2	Submit quarterly groundwater monitoring and sampling reports	1,708	\$8,540,000
Part 3	Submit a Site conceptual model update (SCMU)	1,647	\$8,235,000
TOTAL			\$25,010,000

MINIMUM LIABILITY

30. The economic benefit for the violations is the estimated cost to produce the required technical reports. According to the latest estimate established by the State Underground Storage Tank Cleanup Fund, and based on current industry cost and historical cost to prepare similar technical reports, it was estimated that the cost to develop the required workplan was \$5,000, and the cost to submit the 14 delinquent quarterly groundwater monitoring and sampling reports, as outlined in Cleanup and Abatement Order No. R4-2006-0025, was \$7,000 per report, and the cost to update the Preliminary Site Conceptual Model, and 13 Site Conceptual Model every quarter thereafter, as outlined in Cleanup and Abatement Order No. R4-2006-0025, was \$2,000 per report. Therefore, the economic benefit for the Respondents for not producing the reports is approximately \$129,000.

The adjusted total base liability amount suggested would recover the economic benefit.

PROPOSED LIABILITY

31. As described in Attachments A through C, and in Attachment AA, it is recommended that the Los Angeles Water Board impose civil liability against the Respondents in the amount of \$310,130 for the violations described in this complaint. If the Respondents elect to contest this matter, the recommended liability may increase to recover additional necessary staff costs.

Dated this 17th day of December 2010.



SAMUEL UNGER, PE
EXECUTIVE OFFICER

ATTACHMENT A

Calculation of Liability for Violations Described in Part 1:

1. Step 1 – Potential for Harm for Discharge Violations

The failure to develop and submit a workplan in accordance with Requirement A is a "non-discharge violation." Therefore this step does not apply.

2. Step 2 – Assessments for Discharge Violations

The failure to develop and submit a workplan in accordance with Requirement A is a "non-discharge violation." Therefore this step does not apply.

3. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy's penalty calculation methodology directs the Los Angeles Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is moderate because the failure to submit a workplan results in a substantial potential for harm. The extent of the contamination in the groundwater was not fully delineated. The residual soil and groundwater contamination require further remedial action. Without the workplan, any corrective activities cannot proceed further to bring the site to closure.

The Extent of Deviation from applicable requirements is major because the Respondents have completely disregarded the requirement to submit a workplan.

Using "TABLE 3 – Per-day Factor" and applying a Potential for Harm of moderate and an Extent of Deviation of major results in a factor of **0.55**. As a result, the Initial Base Liability is:

$$\text{Initial Base Liability} = (0.55) \times (1647 \text{ days of violation}) \times (\$5,000) = \mathbf{\$4,529,250}$$

4. Step 4 – Adjustment Factors

a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Los Angeles Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The failure to submit a workplan as required by Requirement A has lasted 1,647 days, to date.

The continuance of the violation is not resulting in a daily economic benefit; therefore an adjustment can be made.

The prosecution team recommends the alternate approach to penalty calculation described in the Enforcement Policy be applied. Using this approach, penalties will be assessed for day 1, 5, 10, 15, 20, 25, 30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, 360, 390, 420, 450, 480, 510, 540, 570, 600, 630, 660, 690, 720, 750, 780, 810, 840, 870, 900, 930, 960, 990, 1,020, 1,050, 1,080, 1,110, 1,140, 1,170, 1,200, 1,230, 1,260, 1,290, 1,320, 1,350, 1,380, 1,410, 1,440, 1,470, 1,500, 1,530, 1,560, 1,590, and 1,620 of violation. This results in the consideration of **60** days in violation.

This results in a Revised Initial Base Liability as follows:

$$\text{Revised Initial Base Liability} = (0.55) \times (60 \text{ days of violation}) \times (\$5,000) = \mathbf{\$165,000}$$

The Enforcement Policy also describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

b. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 1.3 has been selected. On several occasion, the Respondents notified the Los Angeles Water Board that they had exhausted available money from the State Water Board Underground Storage Tank Cleanup Fund, and therefore, were not able to comply with the Cleanup and Abatement Order. Compliance with cleanup directives, however, is not contingent on access to the Cleanup Fund. Therefore, the Respondents' failure to develop and submit a workplan was intentional. Also, the Los Angeles Water Board notified the Respondents on multiple occasions that failure to submit the workplan would result in the imposition of administrative civil liability. Those warnings were verbally acknowledged by the Respondents. However, Respondents still failed to submit the required workplan for a total of 1,647 days at the time this complaint was issued.

c. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

This adjustment was not considered because this is a non-discharge violation. Therefore, a multiplier of 1 is appropriate.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1 is proposed because the Respondents do not have a history of violations known to the Los Angeles Water Board.

5. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

$$(\text{Revised Initial Liability}) \times (\text{Culpability Multiplier}) \times (\text{Cleanup and Cooperation Multiplier}) \\ \times (\text{History of Violations}) = (\text{Total Base Liability Amount})$$

$$(\$165,000) \times (1.3) \times (1) \times (1) = \mathbf{\$214,500}$$

6. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment AA after the Total Base Liability Amounts have been determined for the remaining violations.

ATTACHMENT B

Calculation of Liability for Violations Described in Part 2:

7. Step 1 - Potential for Harm for Discharge Violations

The failure to submit quarterly groundwater monitoring and sampling reports as required by Requirement B is a "non-discharge violation." Therefore this step does not apply.

8. Step 2 – Assessments for Discharge Violations

The failure to submit quarterly groundwater monitoring and sampling reports as required by Requirement B is a "non-discharge violation." Therefore this step does not apply.

9. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy's penalty calculation methodology directs the Los Angeles Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is moderate because the failure to submit quarterly groundwater monitoring and sampling reports results in a substantial potential for harm. Quarterly groundwater monitoring data is required to monitor the progress of the corrective actions taken at the site. Without these reports, it is very difficult to ensure that cleanup is taking place in order to protect beneficial uses and ultimately bring the site to closure.

The Extent of Deviation from applicable requirements is major because the Respondents have completely disregarded the requirement to submit quarterly groundwater monitoring and sampling reports.

Using "TABLE 3 – Per Day Factor" and applying a Potential for Harm of moderate and an Extent of Deviation of major results in a factor of **0.55**. As a result, the Initial Base Liability is:

$$\text{Initial Base Liability} = (0.55) \times (1708 \text{ days of violation}) \times (\$5,000) = \$4,697,000$$

10. Step 4 – Adjustment Factors

a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Los Angeles Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The failure to submit quarterly groundwater monitoring and sampling reports as required by Order Requirement B has lasted 1,708 days, to date.

The continuance of the violation is not resulting in a daily economic benefit; therefore an adjustment can be made.

The prosecution team recommends the alternate approach to penalty calculation described in the Enforcement Policy be applied. Using this approach, penalties will be assessed for day 1, 5, 10, 15, 20, 25, 30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, 360, 390, 420, 450, 480, 510, 540, 570, 600, 630, 660, 690, 720, 750, 780, 810, 840, 870, 900, 930, 960, 990, 1,020, 1,050, 1,080, 1,110, 1,140, 1,170, 1,200, 1,230, 1,260, 1,290, 1,320, 1,350, 1,380, 1,410, 1,440, 1,470, 1,500, 1,530, 1,560, 1,590, 1,620, 1,650, and 1,680 of violation. This results in the consideration of **62** days in violation.

This results in a Revised Initial Base Liability as follows:

$$\text{Revised Initial Base Liability} = (0.55) \times (62 \text{ days of violation}) \times (\$5,000) = \mathbf{\$170,500}$$

The Enforcement Policy also describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

b. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 1.3 has been selected. On several occasion, the Respondents notified the Los Angeles Water Board that they had exhausted available money from the State Water Board Underground Storage Tank Cleanup Fund, and therefore, were not able to comply with the Cleanup and Abatement Order. Compliance with cleanup directives, however, is not contingent on access to the Cleanup Fund. Therefore, the Respondents' failure to submit quarterly groundwater monitoring reports was intentional. Also, the Los Angeles Water Board notified the Respondents on multiple occasions that failure to submit the quarterly groundwater monitoring and sampling reports would result in the imposition of administrative civil liability. Those warnings were verbally acknowledged by the Respondents. However, Respondents still failed to submit the quarterly groundwater monitoring and sampling reports, and every quarter thereafter, for a total of 1,708 days at the time this complaint was issued.

c. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

This adjustment was not considered because this is a non-discharge violation. Therefore, a multiplier of 1 is appropriate.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1 is proposed because the Respondents do not have a history of violations known to the Los Angeles Water Board.

11. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

(Revised Initial Liability) x (Culpability Multiplier) x (Cleanup and Cooperation Multiplier)
x (History of Violations) = (Total Base Liability Amount)

$$(\$170,500) \times (1.3) \times (1) \times (1) = \$221,650$$

12. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment AA after the Total Base Liability Amounts have been determined for the remaining violations.

ATTACHMENT C

Calculation of Liability for Violations Described in Part 3:

13. Step 1 - Potential for Harm for Discharge Violations

The failure to update the Preliminary Site Conceptual Model in accordance with Requirement C is a "non-discharge violation." Therefore this step does not apply.

14. Step 2 – Assessments for Discharge Violations

The failure to update the Preliminary Site Conceptual Model in accordance with Requirement C is a "non-discharge violation." Therefore this step does not apply.

15. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy's penalty calculation methodology directs the Los Angeles Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is minor because the failure to submit the Preliminary Site Conceptual Model results in a minor potential for harm. The Preliminary Site Conceptual Model and its quarterly updates are required to manage the corrective actions at the site. However, even without the Preliminary Site Conceptual Model, it is feasible that effective cleanup could occur using only the workplan and quarterly groundwater reports required by Requirements A and B of Cleanup and Abatement Order No. R4-2006-0025.

The Extent of Deviation from applicable requirements is major because the Respondents have completely disregarded the requirement to update the Preliminary Site Conceptual Model.

Using "TABLE 3 – Per Day Factor" and applying a Potential for Harm of minor and an Extent of Deviation of major results in a factor of **0.35**. As a result, the Initial Base Liability is:

$$\text{Initial Base Liability} = (0.35) \times (1647 \text{ days of violation}) \times (\$5,000) = \mathbf{\$2,882,250}$$

16. Step 4 – Adjustment Factors

a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Los Angeles Water Board may adjust the per-day basis for civil liability if certain findings are

made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The failure to update the Preliminary Site Conceptual Model as required by Requirement C has lasted 1,584 days, to date.

The continuance of the violation is not resulting in a daily economic benefit; therefore an adjustment can be made.

The prosecution team recommends the alternate approach to penalty calculation described in the Enforcement Policy be applied. Using this approach, penalties will be assessed for day 1, 5, 10, 15, 20, 25, 30, 60, 90, 120, 150, 180, 210, 240, 270, 300, 330, 360, 390, 420, 450, 480, 510, 540, 570, 600, 630, 660, 690, 720, 750, 780, 810, 840, 870, 900, 930, 960, 990, 1,020, 1,050, 1,080, 1,110, 1,140, 1,170, 1,200, 1,230, 1,260, 1,290, 1,320, 1,350, 1,380, 1,410, 1,440, 1,470, 1,500, 1,530, 1,560, 1,590, and 1,620 of violation. This results in the consideration of **60** days in violation.

This results in a Revised Initial Base Liability as follows:

$$\text{Revised Initial Base Liability} = (0.35) \times (60 \text{ days of violation}) \times (\$5,000) = \mathbf{\$105,000}$$

The Enforcement Policy also describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

b. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 1.3 has been selected. On several occasion, the Respondents notified the Los Angeles Water Board that they had exhausted available money from the State Water Board Underground Storage Tank Cleanup Fund, and therefore, were not able to comply with the Cleanup and Abatement Order. Compliance with cleanup directives, however, is not contingent on access to the Cleanup Fund. Therefore, the Respondents' failure to update the Preliminary Site Conceptual Model was intentional. Also, the Los Angeles Water Board notified the Respondents on multiple occasions that failure to update the Preliminary Site Conceptual Model would result in the imposition of administrative civil liability. Those warnings were verbally acknowledged by the Respondents. However, Respondents still failed to update the Preliminary Site Conceptual Model, and every quarter thereafter, for a total of 1,647 days at the time this complaint was issued.

c. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

This adjustment was not considered because this is a non-discharge violation. Therefore, a multiplier of 1 is appropriate.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1 is proposed because the Respondents do not have a history of violations known to the Los Angeles Water Board.

17. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

$$(\text{Revised Initial Liability}) \times (\text{Culpability Multiplier}) \times (\text{Cleanup and Cooperation Multiplier}) \\ \times (\text{History of Violations}) = (\text{Total Base Liability Amount})$$

$$(\$105,000) \times (1.3) \times (1) \times (1) = \$136,500$$

18. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment AA after the Total Base Liability Amounts have been determined for the remaining violations.

ATTACHMENT AA

Application of Steps 6-10 to Combined Total Base Liabilities Determined in Attachments A through C

The Combined Total Base Liability Amounts for the violations discussed in Attachments A through C is:

(Total Base Liability for Violations in **Part 1**) +
(Total Base Liability for Violations in **Part 2**) +
(Total Base Liability for Violations in **Part 3**) =

Combined Total Base Liability

$\$214,500 + \$221,650 + \$136,500 = \$572,650$

Step 6 – Ability to Pay and Ability to Continue in Business

The Enforcement Policy provides that if the Los Angeles Water Board has sufficient financial information necessary to assess the violator's ability to pay the Combined Total Base Liability or to assess the effect of the Combined Total Base Liability on the violator's ability to continue in business, then the Combined Total Base Liability Amount may be adjusted downward.

The Los Angeles Water Board Prosecution Team has enough information to suggest that the Respondents have the ability to pay the proposed liability, so that the burden of rebutting this presumption shifts to the Respondents. The Respondents own and operate the Diamond Tire Center automotive repair and tire dealership in Artesia and, in addition, the Respondents own property shown in the table below:

Owner(s)	Assessor's Parcel Number	Property Address	Total Assessed Value	Assessment Year	Mortgage Amount
Hovsep Gezalian; Sarkis Gezalian	7011-007-001	16604 Pioneer Blvd, Artesia CA	\$410,108	2008	\$352,100
Hovsep Gezalian; Sarkis Gezalian	5520-008-020	536 N. Kenmore Ave., Los Angeles, CA	\$291,161	2008	\$130,000

Given the assets and sources of income described above, and without further information concerning the Respondent's ability to pay, there is no basis to adjust the proposed liability.

19. Step 7 – Other Factors As Justice May Require

Staff has incurred costs of investigation and enforcement for issuing the complaint in the amount of \$24,000. This represents approximately 160 hours of staff time devoted to investigating and drafting the Complaint at \$150 per hour. These costs should be added to the Combined Total Base Liability amount.

Although Cleanup and Abatement Order R4-2006-0025 was issued pursuant to authority of Water Code 13304, the requirement to produce groundwater monitoring reports and the requirement to update the site conceptual model, as described in Parts 2 and 3 of this Complaint, are also authorized pursuant to Water Code section 13267(b)(1), which provides, "in conducting an investigation...the regional board may require that any person who has discharged...waste within its region...shall furnish, under penalty of perjury, technical or monitoring program reports..." Persons who violate the requirement to submit technical or monitoring program reports may be liable for up to \$1,000 per day, in accordance with Water Code section 13268. This is a substantially lesser penalty than the \$5,000 per day liability that may be imposed upon any person who violates the requirements of a cleanup and abatement order under Water code section 13350. Because the requirements to produce groundwater monitoring reports and the requirement to update the site conceptual model, as described in Parts 2 and 3 of this Complaint, fit squarely within the authority of Water Code section 13267, the amount of liability imposed for these violations should be commensurate with the maximum liability set forth in Water Code section 13268, which is one fifth the maximum liability set forth in Water Code section 13350. Therefore, it is appropriate to reduce the Total Base Liability for violations in Part 2 and Part 3 to one fifth of their original amounts, as shown below:

$$\$221,650 / 5 = \$44,330 \text{ (reduction of } \$177,320)$$

$$\$136,500 / 5 = \$27,300 \text{ (reduction of } \$109,200)$$

20. Step 8 – Economic Benefit

The Enforcement Policy directs the Los Angeles Water Board to determine any economic benefit of the violations based on the best available information and suggests that the amount of the administrative civil liability should exceed this amount whether or not economic benefit is a statutory minimum.

The economic benefit for the violations is the estimated cost to produce the required technical reports. According to last estimate established by the State UST Cleanup Fund, and based on current industry cost and historical cost to prepare similar technical reports, it was estimated that the cost to develop the required workplan was \$5000, and

the cost to submit the 14 delinquent quarterly groundwater monitoring and sampling reports, as outlined in Cleanup and Abatement Order No. R4-2006-0025, was \$7,000 per report, and the cost to update the Preliminary Site Conceptual Model, and 13 Site Conceptual Model every quarter thereafter, as outlined in Cleanup and Abatement Order No. R4-2006-0025, was \$2,000 per report. Therefore, the economic benefit for the discharger for not producing the reports is approximately \$129,000.

The adjusted total base liability amount suggested would recover the economic benefit.

21. Step 9 – Maximum and Minimum Liability Amounts

Statutory Maximum

The Enforcement Policy directs the Los Angeles Water Board to consider the maximum liability amounts set forth in the applicable statutes.

As described in Paragraph 29 of the Complaint, the maximum potential liability for the alleged violations is **\$25,010,000**.

Statutory Minimum

There is no statutory minimum liability for a violation of Water Code section 13350, unless there is a discharge that occurs in conjunction with each day of violation. However, the enforcement policy directs the Regional Water Quality Control Board to recover, at a minimum, ten percent more than the economic benefit. In this case that would be **\$141,900**.

22. Step 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. The final liability amount calculation for the violation of failing to pay the annual fee was performed as follows.

(Combined Total Base Liability Amount) + (Staff Costs) +/- (Adjustment for Other Factors as Justice May Require) = (Final Liability Amount)

Final Liability Amount = (\$572,650) + (\$24,000) – (\$177,320) – (\$109,200) = \$310,130

WAIVER FORM

FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2010-0211

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Mr. Hovsep Gezalian and Mr. Sarkis Gezalian (hereinafter "Respondents") in connection with Administrative Civil Liability Complaint No. R4-2010-0211 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

☐ **(OPTION 1: Check here if the Respondents waive the hearing requirement and will pay the recommended liability.)**

- a. I hereby waive any right the Respondents may have to a hearing before the Regional Water Board.
- b. I certify that the Respondents will remit payment for the civil liability imposed in the amount of **\$310,130** by check that references "ACL Complaint No. R4-2010-0211" made payable to the "Waste Discharge Permit Fund". Payment must be received by the Regional Water Board by **January 18, 2011** or this matter will be placed on the Regional Board's agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Respondents having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Respondents to further enforcement, including additional civil liability.

- ☐ **(OPTION 2: Check here if the Respondents waive the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Respondents may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Respondents will promptly engage the Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Respondents request that the Regional Water Board delay the hearing so that the Respondents and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(Print Name and Title)

(Signature)

(Date)

**HEARING PANEL OF THE
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

320 W. 4th Street, Suite 200
Los Angeles, California 90013
(213) 576-6600

ACLC No. R4-2010-0211

NOTICE OF PUBLIC HEARING AND HEARING PROCEDURES

**TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND
PROPOSE RECOMMENDATIONS**

RESPONDENTS

MR. HOVSEP GEZALIAN
AND MR. SARKIS
GEZALIAN

SITE LOCATION

DIMOND TIRE CENTER
16604 PIONEER BLVD,
ARTESIA, CALIFORNIA

RECEIVING WATER

COASTAL PLAIN OF LOS
ANGELES

Administrative Civil Liability Complaint ("ACLC") No. R4-2010-0211 alleges that Mr. Hovsep Gezalian and Mr. Sarkis Gezalian (Respondents) violated Cleanup and Abatement Order No. R4-2006-0025 issued on March 8, 2006, which directed the Respondents to take certain actions to assess, monitor, report and cleanup and abate the effects of gasoline discharged to soil and groundwater. As stated in the ACLC, Regional Board staff, represented by the Regional Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of \$310,130 be assessed against Mr. Hovsep Gezalian and Mr. Sarkis Gezalian for these violations.

Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three or more members of the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") will convene a hearing to hear evidence, determine facts, and to propose a recommendation to the Regional Board about resolution of the ACLC.

This notice sets forth procedures and outlines the process to be used at this hearing.

I. HEARING DATE AND LOCATION

Date: March 17, 2011

Time: 9:00 A.M.

Place: To be determined (TBD)

II. AVAILABILITY OF DOCUMENTS

The ACLC and other documents concerning the subject of the ACLC are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. at the following address:

California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Arrangements for file review and/or obtaining copies of the documents may be made by contacting the Case Manager of the Prosecution Team (identified in section V below). Comments received, the Prosecution Team's proposed Hearing Panel Report and Order, and other subsequent relevant documents will be available as they are received or generated.

The entire file will become a part of the administrative record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing or contained in the Hearing Panel binder. However, the entire file might not be present at the hearing. Should any parties or interested persons desire that the Prosecution Team bring to the hearing any particular documents that are not included in the Hearing Panel binder, they must submit a written or electronic request to the Case Manager of the Prosecution Team (identified in section V below) so that it is received by **5:00 pm on February 25, 2011**. The request must identify the documents with enough specificity for the Prosecution Team to locate them. (Documents in the Hearing Panel binder will be present at the hearing.)

III. NATURE OF HEARING

This will be a formal adjudicative hearing pursuant to section 648 *et seq.* of Title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the Regional Board, except as otherwise specified in the above-referenced regulations.

IV. PARTIES TO THE HEARING

The following are the parties to this proceeding:

1. Mr. Hovsep Gezalian and Mr. Sarkis Gezalian
2. Regional Board Staff Prosecution Team

All other persons who wish to participate in the hearing as a designated party shall request party status by submitting a written or electronic request to the Legal Advisor to the Hearing Panel identified in section VIII below so that it is received by **5:00 pm on January 31, 2011**. All requests for designation as a party shall include the name, phone number, and email address of the person who is designated to receive notices about this proceeding. The request shall also include a

- 3) The name of each witness, if any, whom the Respondents intend to call at the hearing, and
- 4) A statement regarding how much time the Respondents need to present the case

to the attention of the Case Manager of the Prosecution Team and the Prosecution Team's counsel (as identified above) and other designated parties so that it is received by **5:00 pm on February 16, 2011**. All documentation listed above must be received by the deadline, or it may be excluded from consideration by the Hearing Panel. The Prosecution Team shall have the right to present additional evidence in rebuttal of matters submitted by any other party.

The Prosecution Team will send to the Hearing Panel and the parties a final Hearing Panel binder no later than **March 7, 2011**.

B. Submittals By Interested Persons.

Persons who are not designated as parties, above, that wish to comment upon or object to the proposed ACLC, or submit evidence for the Hearing Panel to consider, are invited to submit them in writing to the Prosecution Team (as identified above). To be evaluated and responded to by the Prosecution Team, included in the final Hearing Panel binder, and fully considered by the Hearing Panel in advance of the hearing, any such written materials must be received by **5:00 pm on January 18, 2011**. If possible, please submit written comments in Word format electronically to alamaa@waterboards.ca.gov. Interested persons should be aware the Regional Board is entitled to settle this matter without further notice, and therefore a timely submittal by this date may be the only opportunity to comment upon the subject of this ACLC. If the hearing proceeds as scheduled, the Hearing Panel will also receive oral comments from any person during the hearing (see below).

VII. HEARING PROCEDURES

Adjudicative proceedings before the Hearing Panel generally will be conducted in the following order:

- Opening statement by Hearing Panel Chair
- Administration of oath to persons who intend to testify
- Prosecution Team presentation
- Respondents' presentation
- Designated parties' presentation (if applicable)
- Interested persons' comments
- Prosecution Team rebuttal
- Questions from Hearing Panel
- Deliberations (in open or closed session)
- Announcement of recommendation to the Regional Board

While this is a formal administrative proceeding, the Hearing Panel does not generally require the cross examination of witnesses, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom.

Parties will be advised by the Hearing Panel after the receipt of public comments, but prior to the date of the hearing, of the amount of time each party will be allocated for presentations. That decision will be based upon the complexity and the number of issues under consideration, the extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Case Manager by **5:00 pm on February 16, 2011** to state how much time they believe is necessary for their presentations (see Section VI.A above). It is the Regional Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Interested persons may be limited to approximately five (5) minutes each, for their presentations, in the discretion of the Chair, depending on the number of persons wishing to be heard. Persons with similar concerns or opinions are encouraged to choose one representative to speak.

For accuracy of the record, all important testimony should be in writing, and delivered as set forth above. All written materials must be received by the deadlines identified in Section IV.A. and IV.B., above, or it may be excluded from consideration by the Hearing Panel. The Hearing Panel will include in the administrative record written transcriptions of oral testimony or comments made at the hearing.

VIII. COMMUNICATIONS WITH THE HEARING PANEL

A. Ex Parte Communications Prohibited.

As an adjudicative proceeding, Regional Board members and their advisors may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice. **Any communications to the Regional Board, Hearing Panel, or Hearing Panel Advisors before the hearing must also be copied to the Prosecution Team and other Party(ies), as identified above.**

B. Hearing Panel Advisors.

The Hearing Panel will be advised before and during the hearing by Ms. Deborah Smith, and a Legal Advisor, Ms. Jennifer Fordyce, Senior Staff Counsel for the Regional Board. Neither Ms. Deborah Smith nor Ms. Jennifer Fordyce have exercised any authority or discretion over the Prosecution Team, or advised them with respect to this matter.

C. Objections to manner of hearing and resolution of any other issues.

1. Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Case Manager at any time, who will try to accommodate the requests. Agreements between a party and the Prosecution Team will generally be accepted by the Hearing Panel as stipulations.
2. Objections to (a) any procedure to be used or not used during this hearing, (b) any documents or other evidence submitted by the Prosecution Team, or (c) any other matter set forth in this notice, must be submitted in writing and received by the Legal Advisor to the Hearing Panel (identified below) by **5:00 pm on February 16, 2011.**

Ms. Jennifer Fordyce
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, CA 95814
(916) 324-6682
jfordyce@waterboards.ca.gov

Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.

3. Any issues outside the scope of those described in section C.2, above, that cannot be resolved by stipulation shall be brought to the attention of the Legal Advisor to the Hearing Panel, as set forth in section C.2, by **5:00 pm on February 16, 2011** if possible, and if not possible, then at the earliest possible time with an explanation about why the issue could not have been raised sooner.

IX. QUESTIONS

If you have any questions about this notice, please contact as appropriate, the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Panel as described above.

Date: December 17, 2010

